IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA CIVIL DIVISION

PETER GLASSMAN,	
Plaintiff,	**Verified Amended Complaint**
v.	
ARLINGTON COUNTY, VIRGINIA; ARLINGTON COUNTY BOARD; BARBARA FAVOLA, JAY FISETTE, J. WALTER TEJADA, CHRIS ZIMMERMAN, and MARY HUGHES HYNES in their official capacities,	**Civil Action No. 1:09cv1249**
	Judge Claude M. Hilton
And	
VIRGINIA HOUSING DEVELOPMENT AUTHORITY, THE VIEWS OF CLARENDON CORPORATION, THE FIRST BAPTIST CHURCH OF CLARENDON, 1210 NORTH HIGHLAND STREET - CLARENDON LIMITED PARTNERSHIP, BA/CCA SLP LLC	
Defendants.	

VERIFIED AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

I. INTRODUCTION

1. Plaintiff brings this action against Arlington County and members of its Board of Supervisors, for funding the building of a Church, and for their excessive entanglement with and preferential treatment of the Church, in violation of the First Amendment of the United States Constitution and the Virginia State Constitution. The Virginia Housing Development Authority (VDHA) has been added as a Defendant predicated upon the allegation of Arlington County that

it has disbused all of its funding to VDHA as of December 14, 2009. The remaining defendants have been added based on their conspiracy with the County to violate Plaintiff's rights under the United States and Virginia Constitutions and based on their unjust enrichment in receipt of constitutionally improper loan proceeds.

2. This case presents a remarkable example of a state actor taking unprecedented steps to promote, sponsor and fund the demolition, rebuilding and renovation of a Baptist Church with taxpayer money. The County is poised to supply and administer millions of dollars in funds and loans, infrastructure support and county resources to complete a construction project that will be punctuated by a Baptist Church's signature religious steeple, a rebuilt house of worship, religious sanctuary, choir rehearsal room and chapel.

3. The County invokes affordable housing as the stated rationale to support this almost $50 million project. The Church itself will make no cash contribution. The $46 million in government credits, funds and loans required for the Church renovation would yield only 70 affordable housing units in the Church's building – and even then for a finite term of 75 years – at an eye-popping and unprecedented government investment of over $666,000 per affordable housing unit, most of which are only one-bedroom or smaller units. Given that similar units in the vicinity sell for substantially less, it is apparent that the affordable housing rationale has been used to mask what is really a subsidy from the County to support the building of the Church, at the expense of the affordable housing cause.

4. The County's subsidies to the Church only amplify the degree to which the County's actions are entangled with and favor the Baptist Church project over private and commercial developments. The physical layout of the renovated building alone reflects an unmistakable religious overtone. The 70 affordable housing units (as part of a 116 unit

residential complex) will sit literally in the middle of the Church's new structure. The 70 units will sit on land owned by the Church. The building lobby and entrance will be within the Church portion of the property, and will be shared with the Church. The housing units will be sandwiched between the Church's newly-built sanctuary on one end of the structure and the Church's renovated educational wing on the other. The housing units will share with the Church a common foundation, common elevator, and other common infrastructure such as piping and walls, all of which will be wrapped together in a brick and mortar structure occupying its own block of land owned by the Church. Residents who receive the county-subsidized affordable housing will be chosen by a Board dominated by Church-appointed members, with the active participation of a representative of the County. To enjoy their subsidized housing, those residents will literally pass through the Church's property, overlook the Church's steeple, and be subject daily to the Church's message.

5. In short, the County's support of the Church project is so intertwined with religion that the County's affordable housing mantra rings hollow; such an unprecedented and irresponsible use of affordable housing dollars suggests that the County, at worst, actually acted with the purpose of establishing and promoting religion or, at best, its actions have the perceived and actual effect of advancing religion. Either way, the County's actions violate the Establishment Clause of the U.S. Constitution and run afoul of the plain language of the Virginia State Constitution.

6. As background, the First Baptist Church of Clarendon ("Church") plans to initiate construction on a new Church imminently, as soon as this month. To fund the demolition of the current Church and construction of a replacement building, the Church has secured funding from Arlington County (approved by the Board of Supervisors of Arlington County, Virginia

("County Board")), and from funds authorized and/or administered by the Commonwealth of Virginia. The funds used to develop and build the Church were raised through property and other taxes assessed on Plaintiff, and through taxes and other levies placed on developers and other entities pursuant to authorization by the Commonwealth of Virginia and its General Assembly (hereinafter referenced as the "State").

7. Although the County purports to be funding the development of rental apartment units (many of which are designated "affordable" housing units), on information and belief, that funding will also be used to supplement the building of the Church sanctuary and other religious-based facilities, as well as to support the Church's future operations.

8. The County has recently disclosed that 12 units of the project will be used by the County Department of Human Services Permanent Supportive Housing Program, requireing regular and on-going participation by the County in the project and continuing expenditures by the County in connection with the project.

9. Further, through this joint development project with the Church, Arlington County has become excessively entangled with the Church. Arlington County has been the Church's development partner and supporter throughout the development process. The County granted unprecedented zoning variances to benefit the Church, acting (in the words of the Virginia Supreme Court) arbitrarily and capriciously in violation of Arlington's own zoning ordinances. It has approved unprecedented levels of County funding to the project in amounts that are not supported by the value of the property being built. It has even appointed a County representative to sit on the Church-dominated Board of the not-for-profit entity – The Views of Clarendon Corporation – that will oversee the construction of the building that will house the Church.

10. Through the above conduct and through innumerable other steps (laid out below) to help the Church obtain funding for the Church development, the County has given the Church preferential treatment beyond what the County has granted to any other private developer. The result is that the County has created the appearance, and the reality, of providing State and County funds and support for the Church's development and operations. By funding the construction of the Church, and by authorizing the County to levy taxes on residents and developers used to fund the erection and repair of a house of public worship, the County and its Board have violated the Virginia Constitution. Further, through the conduct outlined above (and below in greater detail), the County has become impermissibly entangled with the operation of the Church and has violated the First Amendment of the United States Constitution.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 1367, because this is a civil action claiming, inter alia, violations of the First Amendment to the United States Constitution and the Virginia State Constitution. Plaintiff's action for declaratory relief and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

12. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) because this is the district in which all, or a substantial part, of the events or omissions giving rise to Plaintiff's claims occurred.

III. THE PARTIES

13. Plaintiff Peter Glassman is a resident, citizen, property owner, and taxpayer of Arlington County, Virginia. Mr. Glassman lives in the neighborhood abutting the Church, less than one block from the Church property. The real estate taxes levied against Plaintiff and other

Arlington County real estate developers and owners constitute a substantial portion of Arlington County's budget. On information and belief, as much as 80% of the monies used to fund the Arlington Affordable Housing Investment Fund ("AHIF") – which is providing $13.1 million in loans for the building of the Church – come from the Arlington County budget. Therefore, Plaintiff pays taxes that, in part, fund the AHIF program, which in turn is funding the building of the Church. Plaintiff has an immediate, substantial pecuniary and constitutional interest in AHIF monies, the loan being made through the County AHIF program (the "Loan"), and the County Board's decision to approve that Loan. Mr. Glassman is also not of the Baptist faith, and has a substantial grievance concerning the County and State's financing of a Baptist Church building less than one block from his home. Given his proximity to the Church, he is personally affected by the building of this new structure.

14. Defendants Barbara Favola, Jay Fisette, J. Walter Tejada, and Chris Zimmerman were members of the County Board on October 23, 2004, when the County Board first approved the Loan. They were also members of the Board in February 2007, when the Board voted to increase the amount of the Loan. Defendants Barbara Favola, Jay Fisette, J. Walter Tejada, Chris Zimmerman, and Mary Hughes Hynes are the current members of the County Board and were members of the Board in December 2008 when the County voted to again increase the amount of the Loan. The aforementioned individual members are sued in their official capacities as members of the County Board. Those members, through and as the County Board, are responsible for determining recipients of AHIF monies.

15. Defendant Arlington County, Virginia, is entrusted to manage and disburse AHIF monies as directed by the County Board, including the disbursement to the Church and its agents.

16. Defendant Arlington County, its Board and/or the Board's members also have supported the Church and its consultants in obtaining other public funds allocated to the Church project, including (a) funds provided through a state-sponsored entity (the Virginia Housing Development Authority ("VHDA")) – in the amount of $15.2 million; and (b) funds from the Low Income Housing Tax Credit ("LIHTC") program funded by Federal Government tax credits; those credits, awarded by the State, account for $18.4 million of funding for the Church property.

17. VHDA is an agency of the Commonwealth of Virginia which helps citizens of the Commonwealth with low-to-moderate incomes qualify for rental housing. It issues both taxable and tax-exempt bonds to raise funds. The County claims to have transferred the proceeds from the County's AHIF loan to be held in escrow by VHDA.

18. First Baptist Church of Clarendon ("Church") is a religious body located in Arlington County, Virginia. The Church, together with the County, stands at the center of the events alleged herein. The Church originated the proposal to rebuild the Church using County AHIF funds. It is the principal beneficiary of the County's largess – receiving preferntial treatment in zoning laws that permitted the Church to "sell" "air rights" over the Church for $5.6 million. The Church was the primary conspirator with the County to convince the County to violate Plaintiff's constitutional rights, and has been unjustly enriched through the unconstitutional preferential treatment by the County.

19. The Church also controls the Views due to its domination of the Board of Directors of the Views, and through the appointment of Jerry Morris, a Trustee of the Church, as the President of the Views.

20. 1210 North Highland Street – Clarendon Limited Partnership ("1210 N. Highland") is a Virginia Limited Partnership. That partnership includes the Views at Clarendon Corporation, as a general and limited partner, and BA/CCA SLP LLC as a special limited partner. 1210 N. Highland Street is the legal entity set up by the Church, through the Views, to be the nominal owner of the subject property and to be the nominal borrower of the AHIF Loan Proceeds. Based on the loan documents received to date, 1210 N. Highland appears to have received $4.6 million of the County AHIF Loan proceeds at the time of closing, and $6.7 million of the VHDA funds, and to have paid out of those proceeds $5.6 million to the Church, and $1.3 million to the Views (as the Developer of the building).

21. The Views of Clarendon Corporation ("The Views") is a Virginia not for profit corporation established by the Church. It is the general partner of 1210 N. Highland, and is identified on some documents as the owner of the subject property. The Views was the original applicant for the County Loan, and serves as the Developer of the subject property. As such, the Views has been unjustly enriched (and will continue to be unjustly enriched) by the receipt of funds unconstitutionally authorized by the County. The Views is controlled by the Church, and its President, Jerry Morris, is a Trustee of the Church. Together with the Church and its development partners, the Views has been central to the conspiracy with the County to violate the constitutional rights of plaintiff and other citizens of Arlington County.

IV. FACTUAL ALLEGATIONS

A. Church Develops Strategy to Obtain Financing for New Church Building

22. In or around 2003, the Church determined that it needed to renovate or rebuild its Church building. It also determined that it could not afford the necessary repairs, renovations,

and systems upgrades for the physical facilities. On information and belief, the Church could not obtain commercial financing to meet its financial needs.

23. The Church therefore devised a strategy by which it could finance the rebuilding of its Church through public funds. The Church decided to make the provision of affordable housing part of its religious mission, and it proposed a plan to develop a new Church facility using Arlington County's Affordable Housing Investment Fund ("AHIF"), together with other publicly funded sources, including Low Income Housing Tax Credits ("LIHTC") (administered by the Commonwealth of Virginia) and loans offered by the VHDA. In 2004, the Church incorporated into a nonprofit corporation, partially to take advantage of the public funds potentially available for the Church redevelopment project. Upon information and belief, the Church's Articles of Incorporation state its express and singular purpose "to be a community that lives by faith, is known by love, and is daily growing to be more like Christ." The same Articles of Incorporation provide for an Initial Board of Trustees of the Church. Certain of these Church Trustees would later become members of the supposed "independent" nonprofit Board of The Views Corporation, which the Church created ostensibly to build and manage the affordable housing units separately from the Church.

24. The Church's proposal eventually included the development of a new high-rise ten-story building, a new two-story Church sanctuary and place of worship, a Church classroom and community room, and a renovated educational center that would be used for religious activities as well as to house a day care center, the cash receipts from which, on information and belief, would continue to fund Church operations. Importantly, the Church's design team went to great lengths to retain its signature large religious steeple in the new structure, which would

continue to distinguish the front entrance through which members of congregations pass to enter their house of worship.

25. Under the Church's proposal, above the Church there were to be several floors of luxury apartment units designed to generate cash flow for the new building, and several floors of affordable housing units. The Church was to be built on top of a three-floor parking garage (which provides parking for the apartment units), and the Church and apartment units were to share a lobby space.

B. County Approves Church's Proposal

26. In 2004, the Church submitted this proposal to the County. The Church's plan called for developing the Church building, together with 116 apartment units, 46 market-rate units, and 70 affordable housing units. The Church created a nonprofit affiliate corporation – ultimately called the Views of Clarendon Corporation ("Views") – which would be responsible for overseeing the apartment complex, including its building, leasing, and maintenance.

27. The 7-person Board of the Views would contain three Church members, including a President who simultaneously served as a Church Trustee and Chair of the Church Redevelopment Team. The remaining four members of the Views Board would include three Affordable Housing Advocates and a member appointed by the County.

28. During a public meeting in December 2008, the Church initially claimed that the Board would not contain more than three Church members, but reluctantly acknowledged that one of the three Affordable Housing Advocates was a Church parishioner. Although it was already clear that the three Church representatives on the Views Board, including the President, were not independent and would affect disproportionately the management of the affordable

housing units, the presence of the fourth Church member on the 7-person Board solidified that fact.

29. In 2004, the Church estimated the cost to develop the building would be $30.6 million. Almost 20 percent of that initial funding amount was comprised of $5.8 million that the Views – funded by County, State and Federal Funds – would pay to the Church to acquire the "air rights" over the Church.

30. The County commissioned a financial analysis of the Church's proposal by Bay Area Economics ("BAE"). That analysis demonstrated that the Church land as currently zoned was worth only $1.1 million.

31. The BAE study noted that the value of the Church property could be increased to $10.5 million if the Church were demolished, the site were rezoned to C-R, and a condominium unit were placed on the Site. But the Study concluded that such development would entail the loss of the subsidized day care center associated with the Church, and the "other community benefits" provided by the Church. The Study also noted that Commercial development of the full Church site would not provide an adequate return to attract developer and investor interest.

32. The BAE study also evaluated twelve potential design options for the building. BAE noted that the key to measuring the feasibility of any option is its ability to repay the loans issued to finance the project. The BAE study concluded that the Proposed Design (the design ultimately approved) would not repay the County's $4.5 million loan within a 40-year period, having a balance of $1.1 million at the end of that period.

33. Notwithstanding the BAE study conclusions, the County Manager recommended approval of the Church's Proposed Design. In evaluating the various options, the County

Manager concluded that the Church's Proposed Design "is the only alternative that meets the dual objectives of producing a financially viable and efficient affordable housing program, ***while producing sufficient capital and revenue and income to meet the [Church's] needs.***" The County Manager noted that "No other alternative generates enough capital or revenue to allow the FBCC to complete its renovation." The County Manager noted that other scenarios would require substantially larger AHIF contributions, which could not be recommended. The County Manager concluded that in other options considered, the County's participation "effectively becomes a grant that is not repaid."

34. Although lacking in any publicly-documented support, the County Manager determined that the value of the air rights to be purchased from the Church was $5.8 million, which, coincidently, is the amount estimated for the Church to rebuild its sanctuary, Steeple, and other Church properties.

35. Under the Church's 2004 proposal, the $30.6 million to fund the Church would be paid through LIHTC (managed by the State, using Federal funds) ($9.4 million), County AHIF funds ($4.5 million), VHDA loans ($1.5 million), a private mortgage ($13 million), and other sources ($2.2 million). The County Manager specifically noted that the private mortgage lender will perform a comprehensive loan underwriting review, and the failure to meet that underwriting review (among others) would result in the project not moving forward.

36. The County Manager noted that the $4.5 million in AHIF funding resulted in a subsidy of $64,000 per affordable unit, which was almost double the subsidy provided on other AHIF projects (which was $35,000), and represented two-thirds of the total value of affordable housing units at that time (approximately $100,000 per unit). The County Manager also

estimated that the County AHIF funds would require 45 years to pay back (longer than the 40-years deemed key to measuring the feasibility of the project by BAE).

37. On or about October 23, 2004, the Arlington County Board approved a conditional commitment of $4.5 million in AHIF funds for the project.

C. County Approves Zoning Changes in Violation of its Own Zoning Rules

38. A significant hurdle to the Church's plan was that the Church's existing zoning did not permit the Church to develop a ten-story building, and without building to ten stories, the Church's proposed development would not be economically viable. Thus, in 2004 the Church requested that the County change its zoning and approve a site plan to accommodate a ten story building.

39. The Church's proposal raised concerns by those living near the Church, who believed that the proposed building towered over nearby homes. Despite several meetings to discuss ways of alleviating the Community's concerns, the Church and the County rejected the Community's concerns and proposals.

40. The County approved the Church's proposed zoning changes.

41. The County's zoning decision was challenged in Virginia state court. In September 2006, the Virginia Supreme Court ruled that Arlington County had violated its own zoning ordinances. The Virginia Supreme Court unanimously determined that despite "the presumptive reasonableness" of legislative action generally in the form of rezoning, in this case Arlington County "acted in direct violation of [its zoning ordinance in approving the Baptist Church's re-zoning application]. . . its action was arbitrary and capricious, and not fairly debatable, thereby rendering the re-zoning void and of no effect."

42. Rather than modify the site plan to conform with its existing ordinances, the Arlington County Board changed its ordinances to permit it to make the type of zoning and site plan changes necessary to permit the Church's development. The County's revised zoning changes were specifically targeted to benefit the Church; only three other blocks in all of Arlington County are affected by the zoning change.

43. Another legal challenge to the zoning changes followed. By April 2008, the Virginia Supreme Court denied the Plaintiff's petition for rehearing.

D. Church Seeks Additional Financial Assistance from the County

44. In February 2007, the Church again sought additional funding from the County to build the Church, citing an increase in the costs needed for construction (to $41 million). Among other items, the Land Acquisition costs to be paid to the Church increased to $6.1 million.

45. Apparently, without conducting any further financial analysis of the project feasibility, the County Board, in a 4-1 vote, approved the increase of County AHIF funding by $2.1 million, for a total funding of $6.6 million. Other governmental funding sources, including the VHDA loans and the tax credits also increased at this time.

46. The one dissenting Board member in 2007, Paul Ferguson, in voting to oppose the funding, was quoted as saying that "I have some angst and reservations about the County partnership to keep the Church going. "

47. By fall of 2008, the Church's plans were again in jeopardy. The Church now estimated that construction and other costs had risen to almost $50 million, and the Church did not have access to sufficient funds. The Church again went to the County for additional assistance to finance the building of the Church, and its attendant apartment units.

48. The County again obliged. The County doubled its total AHIF funding, adding $6.5 million to the $6.6 million already committed to the project. Other government-sponsored funding, including the LIHTC tax credits also increased (by $3.2 million). Notably, the first mortgage on the property declined by nearly 20 percent. As a result, the County funding ($13.1 million) for the project now exceeds the funding from the first mortgage ($11.7 million).

49. The County manager noted in recommending the Church's proposal that based on $13.1 million in AHIF funding, the AHIF subsidy per unit would be $186,535, far greater than the value that the County assigned to each affordable housing unit in its 2004 assessment. The County apparently did not commission any additional financial analysis to support such a generous financial commitment.

E. Church Attempts to Meet Other Funding Criteria, and Prepares for Construction

50. Even after the approval of the additional funds from the County, the Church was still not ready to begin construction on the new building. For one, it still had to finalize its financing, which, during the recent market turmoil and credit market meltdown, was challenging.

51. Further, the Church had to meet other conditions before it could begin demolition and construction. One of those conditions was that the Church find a place to relocate the child development center (CDC) in the Church's educational building before it could evict the children during the construction period.

52. By September 2009, the Church had been unable to meet even this requirement. The County again came to the Church's assistance. The County requested that the Arlington Public Schools permit the day care students to use Arlington Public School facilities located nearby for the remaining seven months of the school year, and agreed to "work with the CDC" and Arlington Public School System to find another acceptable location if the temporary, 7-

month lease could not be renewed at the new location. While even that uncertain commitment calls into question whether the site plan has been met with sufficient specificity to this very day, that ambiguity has not prevented the County from forging ahead on the Church project over the objection of certain parents of children in the CDC.

53. Upon information and belief, the child development center continued to operate in the Church's educational building until the last week of October 2009. Thus, it has only become apparent recently that the Church would in fact proceed in the construction of its new Church facility.

F. State and County Funding Being Used to Fund the Church Building

54. The State and County are providing nearly all of the funding for the Views, and by extension, for the erection of the Church. Those funds come in the form of County AHIF funding, VHDA funding administered by the State, and LIHTC tax credits, also administered by the State.

55. The County AHIF funding is funded through County contributions (based on property and other taxes assessed on county residents), and through taxes and other levies imposed on developers. The State General Assembly specifically authorized the imposition of such levies on developers. *See* SB 273 enacted in 2006.

56. On information and belief, the VHDA funding is administered by the VHDA, a quasi-governmental organization, supported by the State.

57. The County now alleges that it has disbursed its funding of approximately $13.1 million dollars to the VHDA, as of December 14, 2009, despite notice of and the pendency of this suit. These funds are allegedly being held in escrow by the VHDA,with the exception of $4.6 million that was provided to 1210 N. Highland at the closing. In addition to the County's

funds, the VHDA also holds federal funds of $18,696,192 and its own funds of $14,500,000.00, all of which are set aside in escrow for the Church project. From these funds, approximately $5,600,000.00 were paid out at closing for the purchase of the Church's property. Another $5.7 million was also paid out at the closing to other entites. This included $1.3 million that was paid out as a Development Fee to the Views and/or the Special Limited Partner for the benefit of Bozzuto. According to the VHDA, the County funds will be the last funds paid out.

58. The LIHTC tax credits are also administered by the State. By approving LIHTC credits to be used by the Church, the State authorized the levy of Federal taxes to be used for the erection or repair of a house of worship.

59. Although purporting to finance only the affordable housing portion of the building, the County and State funds are in fact funding the building of the Church.

60. Based just on the drawings of the structure – which requires a color-key to determine where the Church begins and the Views ends – it is clear that the costs of constructing the Church will be wholly intertwined with the costs of constructing the remainder of the building. Indeed, the Church will sit on the foundation of the parking garage developed and owned by the Views. Yet, there is no apparent mechanism for compensation from the Church to the Views for the use of this foundation, or to compensate for the costs foregone by the Church in not having to dig and build the foundation. The Church and the Views apartments will also share at least one common entrance and lobby, common bathrooms, a common elevator, and common infrastructure and integrated systems, such as plumbing, heating, ventilation, and air conditioning, and the very walls themselves. The Church on one side, the Church's educational wing on the other, and the apartments squeezed vertically in between, will all be wrapped in a single brick and mortar structure, occupying its own block on land owned by the Church and

punctuated by the highest point of the unified structure – the apex of the Church's signature religious steeple. Upon information and belief, attached as **Exhibit A** to this Complaint is an accurate front and lateral color rendering of the planned construction project.

61. One recently obtained document reflects that the contractor, who is charging a $5.5 million fee related to the building of the residential units, agreed to serve as the developer for the Church space for no additional fee if the Church spaces were completed simultaneously with the residential units. In this way, the Views is further subsidizing the building of the Church.

62. Further, as noted above, on information and belief, the amount paid to the Church to purchase the "air rights" likely far exceeded the true value of those rights. Rather, the value assigned to the rights was set based on the amount needed by the Church to rebuild its sanctuary. Indeed, the County itself artificially enhanced those "air rights," creating them out of whole cloth through the manipulation of its zoning laws, manufacturing just enough "value" to make this project work financially. In this fashion, the County, through the Views, directly subsidized the building of the Church.

63. Other documents obtained through FOIA requests reflect a long-held determination by the Church, the Views, and its partners to funnel the public funds to the Church. One email noted that under one planning scenario "there is a short fall on the [Church] side ($349,013). . ." It then states, "This is obviously a gap that has to be filled through AHIF – but then we have to figure out how to make the transaction work without the County appearing to subsidize church costs." The email concludes that "Once everyone has reviewed and made changes, the portion [of the spreadsheet] on the bottom that tracks Church costs should be deleted before forwarding."

64. Another email notes that "Another 'hurdle' is how to use AHIF to pay the Church's build-out costs. . ."

65. Even County personnel appear to be complicit in this effort to misdirect public funds. In one email from the County, the County's Housing Development Coordinator stated "For hopefully the last time, please take the church costs out of these spreadsheets," because the spreadsheets were about to be shared with another county subcommittee.

66. On information and belief, Plaintiff believes that after additional opportunity for discovery, even more evidence will emerge demonstrating that State and County funds are being used directly to fund or subsidize the building of the Church.

67. Indeed, the Church appears to be investing little of its own funds to build the Church, which is being funded almost exclusively from public sources. Assuming that the government-subsidized loans are ever paid off, on information and belief the Church will also be the deFacto owner of the Views residential property, with access to the perpetual funding mechanism that the property provides.

G. County is Impermissibly Entangled in Church Matters

68. The County's conduct over the past five years alone reflects the degree of its entanglement with the Church. The County has repeatedly bailed the Church out with ever larger (taxpayer funded) contributions to the Church. The County has also worked with the Church to help the Church obtain funding from State and other sources. The County has granted the Church favorable zoning variances, even in violation of its own zoning ordinances, in order to enable the building of the Church. And, on information and belief, the County even funded costs of litigation incurred by the Church during litigation related to the zoning of the property.

69. The County's excessive entanglement will continue. The Loan from the County calls for one or more County representatives to sit on the Board of the Views of Clarendon. That Board is dominated by members of the Church, who have the right to select their own successors into the future. That Church-dominated board, on which the County representative will sit, will be responsible for, among other things, supervising the construction of the building, and determining which applicants will be granted access to renting the subsidized affordable housing at the building. If the Church members favor renters of a particular set of beliefs (or is even perceived to do so), the County Board's representative will be perceived as supporting such conduct.

70. The County Board has characterized the ongoing relationship with the Church as a "partnership," even as the Church states that its affordable housing development is "an extension of its ministry."

71. Moreover, even the efforts (if any) taken by the County Board representative and the County to ensure that State and County funds are not used for Church purposes – an effort that will require substantial monitoring – will lead to the perception that the County is excessively entangled in Church activities.

H. The County is Giving the Church Preferential Treatment

72. The County's conduct demonstrates a substantial preference being shown to the Church's project that has never been afforded to other projects.

73. As noted above, the County approved a site plan in violation of its own zoning ordinances to benefit the Church. After that change was struck down by the Virginia Supreme Court, the County amended its long-standing ordinances to allow the Church project to move forward – a benefit that on information and belief has never been extended to private developers.

74. The County has tripled its AHIF contribution to the Church, from $4.5 million to $13.1 million. On a per unit basis, the County's contribution will be approximately $87,000 per unit, which is substantially greater than any other AHIF contribution in any other project.

75. The total public funding for the building amounts to approximatley $666,000 per affordable housing unit. This amount far exceeds the fair market value of those units, given that similar spaces in other buildings in the area sell for far less.

76. Moreover, the underwriting assumptions used to support the County's loan amount makes assumptions that are simply not supported by market conditions. The County would never accept such "optimistic" assumptions from a private developer. Yet, the County has accepted these assumptions from the Church, even though the County in 2004 recognized that the AHIF funds would "effectively become a grant that is not repaid." That conclusion is practically guaranteed after the County tripled its AHIF contribution.

77. The County's preferential treatment of this Church-sponsored development has deviated in other respects from its own funding guidelines. For example, while the AHIF website states that it seeks funding leverage of 5:1, the Church project achieves little more than half that amount – a 2.8:1 funding leverage. The County has also extended the payback period of the loan to 40 years, which is well in excess of the standard 30-year repayment term for similar loans.

78. Similarly, even though the County's original 2004 approval of the project stated that it would not proceed forward unless the project met the underwriting requirements of the private lender, the County is now proceeding with the project even without any private lender participation, and even though the County's loan now exceeds the amount being provided in the first mortgage.

79. The County has also indicated that it is willing to forego contributions that it typically requires from private developers, and will forego the requirement imposed on private developers to underwrite the County's construction cost of new sewer and other facilities supporting the new building.

80. In short, the County has given the Church preferential treatment over that given to private developers, and at the least, creates the appearance of supporting the Church's activities.

I. The County and Church Have Been on Notice of This Unconstitutional Conduct for Five Years and Have Failed to Correct It

81. This is not the first time that the concerns raised in this Complaint have been raised to the County and its Board.

82. From the date of the application for the Church development, Arlington County residents and civic associations, as well as the national watchdog organization Americans United for Separation of Church and State, entreated the County Board not to approve the application on numerous grounds, including the fact that the Loan and other entanglements described herein would breach the constitutionally-required separation between Church and State.

83. In the opening of a 2004 letter from Americans United for Separation of Church and State ("AU"), the organization wrote, "This arrangement would create a host of constitutional problems. Therefore, we are writing to provide you with the legal guidelines that govern transactions of this kind and to urge you not to approve the loan."

84. AU noted that "[b]ecause the Church plans to place the affordable-housing units in a church building that is used for religious worship, there is a strong possibility that government funds will be used for the construction, improvement, or repair of Church facilities that are used for religious purposes. An explicit restriction prohibiting the use of the loan funds

to pay for construction of the facilities would not be sufficient to make the proposed loan constitutional, because intense government monitoring would be required to ensure that the Church adhered to the restriction, and such monitoring would excessively entangle the government with religion."

85. AU cited a number of factors – including the unprecedented loan amount per unit and repayment terms – as creating "the unconstitutional appearance of a religious preference, because the County would be extending a benefit to a particular church that has never been afforded to other groups, religious or secular."

86. AU also described as "constitutionally troubling that the income generated by the affordable-housing units that would be financed by County dollars would go to the Church to further its religious mission."

87. AU concluded that the project would "violate the longstanding, elemental proposition that public monies cannot be used to build or renovate a church," and concluded that the project would be unconstitutional.

88. Notwithstanding this warning from AU, the County and its Board members voted to approve the funding of the project. In fact, the then-County Board chairperson stated that the project would serve as a model for other development projects in partnership with churches in Arlington County. To AU, this statement was "disturbing." It noted that "the use of government funds, earmarked to create affordable housing for working families, to generate income to further the religious mission of a church surely subverts the purpose and meaning of the Establishment Clause."

J. Non-County Entities are Acting in Conspiracy with the County and Have been Unjustly Enriched by the County's Unconstitutional Actions.

89. The Church and The Views, have acted in a civil conspiracy with the County to violate the Constitutional rights of the Plaintiff in violation of 42 U.S.C. 1983. Those entities together, or separately, have also created the 1210 N. Highland entity and the Special Limited Partner entity to carry out that conspiracy.

90. The Church has been at the center of this development since 2004. It has been acting in concert with the County and its Board to convince them to grant the unconstitutional AHIF Loan, and to grant the other preferential treatment that is alleged herein. That concerted action has taken the form of many overt unconstitutional acts, including but not limited to the Church and the County agreeing to amend the zoning requirements for the Church property, the Church and the County agreeing to the AHIF Loan from the County at ever increasing amounts, and the Church and the County agreeing to the other preferential treatment alleged herein. That conduct, separately and together, have resulted in violating Plaintiff's constitutional rights as protected by the First Amendment of the United States Constitution. That conduct also unjustly enriched the Church at the least through the receipt of an inflated value of the "air rights" it sold to the Views.

91. The Church set up the Views as the nominal owner and manager of the property, and installed as its President one of the Church's own Trustees. The Church completely dominates the Board of the Views and controls its conduct. The Church, the Views and the County acted in concert to value the Church's "air rights" at an artificially inflated value in order to permit the County funds to be used to subsidize the building of the Church. The Church, the Views and the County also acted in concert to agree on the amended zoning, the Loan grant, and the other preferential acts by the County to the Church. That conduct violated Plaintiff's First Amendment Rights. That conduct, and other conduct alleged herein, also resulted in the unjust

enrichment of the Views. The Views, acting as the developer, is being compensated by 1210 N. Highland for the development of the property, using the funds unconstitutionally approved by the County. The Views will also be unjustly enriched by receipt of County funds for the occupancy of tenants through the County programs.

92. 1210 N. Highland and the Special Limited Partner were both instruments of and actors in the conspiracy initiated by the Church, the County, and the Views as alleged above. 1210 N. Highland was established by the Views to be the owner of the Property and the recipient of the Loan. It then channeled the Loan funds to the Church and to the Views, in furtherance of the Conspiracy. Those acts, and the other acts alleged herein, violated Plaintiff's First Amendment rights. The Special Limited Partner was set up as the limited partner in 1210 N. Highland and will receive profit in the form of a developer's fee as a result of the funding being unconstitutionally provided to 1210 N. Highland. This conduct violates Plaintiff's First Amendment rights and also results in the unjust enrichment of the Special Limited Partner.

CAUSES OF ACTION

Count I

Violation of the First Amendment to the United States Constitution

93. Each and every allegation contained in the preceding paragraphs is incorporated herein by reference.

94. The Establishment Clause of the First Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion. . . ." The First Amendment applies to the Defendants through the Fourteenth Amendment to the United States Constitution.

95. Defendants' approval of the Loan has the primary effect of advancing religion, it inherently defines the loan recipient, the Views at Clarendon, by reference to its religious nature given the domination of its Board by Church members, and it fosters an illegal entanglement with religion. The Loan is an unprecedented distribution of public funds to the Church for the demolition and reconstruction of a building, several floors of which will be used as the Church's place of worship or in support of the Church's religious operations. But for the Loan, with terms that are extraordinary and preferential to the Church, the Church project would not be able to go forward. The resulting rental apartment units, acknowledged as an extension of the Church's ministry, would generate income to pay off the financing of the demolition and rebuilding of the Church, and would provide additional income to the Church in the future. In fact, the public funds are essential for the Church's continued survival by generating these cash receipts from rental units and other operations in the renovated building. The entanglement between church and state is further aggravated by the provision that one or more County representatives become voting members of the Board of Directors of the developer of the Church's new structure, and by the County Board's own view that it has entered a "partnership" with the Church.

96. By violating the Establishment Clause as set forth above, the Defendants have, under color of statute, ordinance, regulation, custom, and/or usage, deprived Plaintiff of rights secured by the First and Fourteenth Amendments of the U.S. Constitution, entitling Plaintiff to a remedy under 42 U.S.C § 1983.

Count II
Violation of the Virginia State Constitution

97. Each and every allegation contained in the preceding paragraphs is incorporated herein by reference.

98. The Virginia State Constitution, Article 1, Section 16, states:

> That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please. (emphasis added)

99. The Defendants violated the clear language of the Virginia State Constitution in approving the Loan, by levying taxes and other fees that are used to erect and repair the Church's house of worship and support the Church's ministry. The Defendants' conduct confers peculiar privileges and advantages on the Baptist Church, and compels Plaintiff to support the Church through the use of funds from taxpayer contributions. For the additional reasons expressed above, including that the County funding excessively entangles it with religion under the U.S. Constitution, the Defendants violated the Virginia State Consitution in approving the Loan and by coordinating, supporting, and/or helping administer other public funds to benefit the Church's construction project and ongoing operations.

Count III

Civil Conspiracy under 42 U.S.C. § 1983

100. Each and every allegation contained in the preceding paragraphs is incorporated herein by reference.

101. Defendants Church, Views, 1210 N. Highland, and Special Limited Partnership participated in a civil conspiracy with the County to deprive Plaintiff of his First Amendment Rights.

102. Defendants Church, Views, 1210 N. Highland and Special Limited Partnership acted in concert with each other and the County as alleged herein to obtain the financing, and the preferential treatment afforded to the Church by the County.

103. Defendants Church, Views, 1210 N. Highland and Special Limited Partnership took overt acts in furtherance of that conspiracy as alleged herein.

104. The conduct and overt acts taken by Defendants Church, Views, 1210 N. Highland and Special Limited Partnership in furtherance of the conspiracy resulted in the deprivation of Plaintiff's First Amendment Rights through the Loan and the preferential treatment shown to the Church by the County.

Count IV

Unjust Enrichment

105. Each and every allegation contained in the preceding paragraphs is incorporated herein by reference.

106. Defendants Church, Views, 1210 N. Highland and Special Limited Partnership each were unjustly enriched through their conspiracy with the County.

107. Defendants Church, Views, 1210 N. Highland and Special Limited Partnership each received a benefit from the County's unconstitutional financing of the project. The Church received excess funds based on an inflated valuation of its air rights and the preferential treatment by the County through its zoning process. The Views and Special Limited Partnership each received, or will receive, a profit as the developer or contractor for the Property, which

profit is paid in part by the County financing. 1210 N. Highland is unjustly enriched by, among other things, receiving rent from the County for the use of apartment units in the property, and also because the property which it owns would not be developed but for the unlawful conduct of the County. Those benefits were conferrred on those defendants only through the violation of Plaintiff's constitutional rights under the First Amendment. Those benefits were conferred on Defendants by the Plaintiff through the County's unlawful conduct.

108. Each of the above listed defendants knew that they were receiving a benefit through their participation in the unlawful conspiracy with the County. Each of those defendants also were on notice that their conduct violated Plaintiff's constitutional rights. Among other things, Defendants Church and Views were present in December 2008 when Plaintiff informed the County that its approval of the Loan violated Plaintiff's First Amendment Rights.

109. Each of the above-listed defendants have retained that benefit as described above.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

a) Assume jurisdiction of this action;

b) Issue a Temporary Restraining Order and/or a Preliminary Injunction prohibiting the VHDA from disbursing any funds received for use on the Church project and prohibiting the County from taking any further steps to advance the Church project;

c) Issue a mandatory injunction requiring that the County obtain the return of all moneys it has spent, loaned or otherwise committed for the construction of the Church project;

d) On Count 1, declare that the Loan and the action of the County, both in approving the Loan, and in supporting the Church to obtain or administer other public funds to benefit the Church's construction project and ongoing operations, are in violation of the Establishment Clause of the First Amendment to the United States Constitution;

e) On Count 2, declare that the Loan and the action of the County, both in approving the Loan, and in supporting the Church to obtain or administer other public funds to benefit the Church's construction project and ongoing operations, are in violation of Article 1, Section 16, of the Virginia State Constitution;

f) Issue permanent injunctions against the Defendants, their agents, employees, and any persons acting in concert with them, from enforcing or giving effect to the Loan or from taking any action toward the construction of the Church Project (since any remedy at law would be inadequate), including but not limited to enjoining the Defendants from taking any acts in furtherance of permitting inspections, the provision of utilities, or the use or maintenance of any units by the County Department of Human Services Permanent Supportive Housing Program;

g) Order the rescission of the Loan, and order the restitution of all funds to the County, and order each of the Defendants to return any county funds received directly or indirectly to the county;

h) Order all defendants to cease and desist from any further work on the construction of the project until no portion of the project is funded with County funds and until the County has countermanded all actions found to constitute preferential treatment to the Church;

i) Retain jurisdiction over this action until the County Board rescinds, and officially resolves never to approve in the future, the Loan and any other official actions or approvals associated with the Church construction project or any similar project in the future that would provide public funds toward the rebuilding of a church or facilities used for religious purposes;

j) Award all costs, expenses, and reasonable attorneys' fees incurred in bringing and prosecuting this action, both pursuant to 42 U.S.C. §§ 1983, 1988 and pursuant to equity;

k) Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case; and

l) Provide other relief as the Court deems just and equitable in the circumstances.

This 26th day of January, 2010.

Respectfully submitted,

/s/

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I swear, under penalty of perjury, that the foregoing is correct to the best of my knowledge.

Peter Glassman
January 15, 2010

COMMONWEALTH OF VIRGINIA:

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 15th day of January, 2010.

ID#7078347
Notary Public

My Commission Expires: 5\31\11

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2010, I will electronically file the foregoing Verified Amended Complaint for Declaratory Judgment and Injunction with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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